Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1998

Mr. Jason C. Marshall
Nichols, Jackson, Dillard,
    Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR98-1349

Dear Mr. Marshall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116191.

The City of Coppell (the "city") received fourteen requests for information concerning incidents that occurred "at 617 Pheasant and/or 601 Shadowcrest, Coppell, Tx. during any period between January 1, 1997, and March 5, 1998, that involved" four named individuals. You state that the "information responsive to these requests can be found in the records held by the City of Coppell Police Department as relat[ing] to three separate incidents." You assert that the requested information is excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. We have considered your arguments and reviewed the information submitted.

Initially, we will consider the requestor's contention that the city failed to seek a decision from this office within ten business days after receipt of the written request for information in accordance with section 552.301 of the Government Code. The city received the original request on March 5, 1998. On March 16, 1998, the city asked the requestor to clarify his request which he did so on March 20, 1998. A governmental body may ask the requestor to clarify the request if what information is requested is unclear to the governmental body. Gov't Code § 552.222(b). Thus, the March 20, 1998 request is the operative request for information. Since the city asked us for a decision on April 1, 1998, it has complied with the ten-day deadline under section 552.301. Open Records Decision No. 333 (1982) (ten-day deadline does not begin to run during the time that the requestor and the governmental body attempt to resolve access to the records).

In addition, the requestor states that he represents an individual who is the subject of some of the requested information. The requestor further states that he has a special right of access to the information under section 552.023 of the Government Code because the individual has authorized release of the information to the requestor. Section 552.023 prevents a governmental body from asserting an individual's own privacy as a reason for withholding records from that individual. Open Records Decision No. 481 (1987). However, the individual's right of access to private information about that individual under section 552.023 does not override exceptions to disclosure in the Open Records Act or confidentiality laws protecting some interest other than that individual's privacy. Open Records Decision No. 556 (1990) at 2. Here, the city claims exceptions under sections 552.103 and 552.108.

Section 552.108 of the Government Code excepts from required public disclosure

> (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

>> (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

>> . . . .

> (c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

For the information concerning the offense of obstruction, you indicate that the defendant was found not guilty. As for the incident of theft, you inform us that "it was apparently decided that this matter would not be prosecuted." Because the requested information for these two incidents relates to investigations that did not result in a conviction or deferred adjudication, we conclude that you may withhold the requested information for these incidents under section 552.108(a)(2).

However, we note that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, except for basic information, the requested information for the incidents of theft and obstruction is excepted from

disclosure under section 552.108(a)(2). Although section 552.108 authorizes you to withhold the requested information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Section 552.103(a) excepts from disclosure information:

> (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

> (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Additionally, section 552.103(b) provides that the state or a political subdivision is considered to be a party to litigation of a criminal nature until the defendant has exhausted all post-conviction remedies in state and federal court.
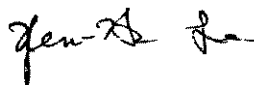
The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Therefore, the governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

For the documents relating to the case of false imprisonment, you inform us that the "case is currently in litigation at the direct appeal stage." You have also submitted an affidavit from the Dallas County District Attorney's Office which avers that the case is pending in the Fifth District Court of Appeals, and that the requested information be excepted from public disclosure. After reviewing the information and your arguments, we conclude that you have shown that litigation is pending and that the requested information relates to pending litigation. Therefore, you may withhold the requested information pertaining to the false imprisonment case under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.:   ID# 116191

Enclosures: Submitted documents

cc: Mr. R.G. Harrell
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Coppell, Texas 75019
(w/o enclosures)